



EXTRAORDINARY

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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 5th October 2007

No. 11328—II/1 (BH)-69/2001-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 28th June 2007 in I. D. Case No. 22/02 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s Talcher-Angul Development Authority, Angul and its workman Smt. Ritarani Mohapatra was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 22 OF 2002

Dated the 28th June 2007

Present :

Shri S. K. Mohapatra, O. S. J. s. (Jr. Br.).
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of M/s Talcher-Angul
Development Authority, Angul.

.. First Party—Management

And

Its workman
Smt. Ritarani Mohapatra.

.. Second Party—Workman

Appearances :

None

.. For First Party—Management

Shri B. C. Bastia, Advocate

.. For Second Party—workman

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the management of M/s Talcher-Angul Development Authority, Angul and its workman Smt. Ritarani Mohapatra under Notification No. 10909-LE., dated the 16th August 2000 vide Memo. No. 1968 (5)-LE., dated the 13th February 2002 for adjudication by this Court.

2. The terms of reference by the State Government is as follows:—

“Whether the action of the management of TADA, Angul in terminating the services of Smt. Ritarani Mohapatra with effect from the 4th March 2000 is legal and/or justified ? If not, what relief is the workman entitled to ?”

3. Shern of all unnceessary details the case of the workman in brief is as follows:

The workman was appointed under the management of Talcher-Angul-Meramundali Regional Improvement Trust (hereinafter referred to as the management) as Junior Typist on the 1st September 1993 in the pay scale of Rs. 950—20—1150—EB—25—1500 on *ad hoc* basis for 44 days which was extended from time to time up to the 26th February 1994. Thereafter the appointment order was issued for 89 days up to the 24th February 1995 and on completion of each spell of appointment order there was an artificial break of one or two days. On the 25th February 1995 the appointment order was given for 180 days but the same was kept in abeyance. The workman was performed her duty satisfactorily but in spite of that the management stopped issuing written appointment order after the 3rd March 2000. In her statement of claim the workman has claimed to have worked beyond the period the 4th March 2000 on the verbal direction of the management but such period of service on purportedly verbal order of the management being beyond the reference needs no elaboration in this case. Further averments of the workman is that she was in continuous service under the management but in spite of that the management did not comply the provisions under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the I. D. Act). On these averments the workman has claimed for her reinstatement in service with full back wages,

4. The management has been set *ex parte* vide order, dated the 11th November 2002.

5. In her evidence the workman has stated that she joined in the establishment Talcher-Angul-Meramundali Improvement Trust which was re-named as Talcher-Angul Development Authority (TADA in short) on the 1st September 1993 as Junior Typist and continued to work under the management till the 30th September 2000. In her evidence W. W. 1 has further stated that the management refused employment to her with effect from the 1st October 2000. According to the workman she had been appointed on *ad hoc* basis. Documentary evidence proved by the workman are Exts. 1 to 7. Since in the reference the date of alleged termination has been noted as the 4th March 2000 the dispute in the instant case shall be confined to the said date i. e. the 4th March 2000. It is now to be examined from the evidence on record as to whether the workman was in continuous service within the meaning of Section 25-B of the I. D. Act in 12 calendar months preceding to the date of her termination from service on the 4th March 2000 i. e. between the period the 5th March 1999 to 4th March 2000. Ext. 1 series are the xerox copies of letters of appointment of the workman under the management. From these documents it is seen that between the period the 5th March 1999 to the 4th March 2000 the workman had worked for 358 days under the management and therefore, it is clear that the workman was in continuous service within the meaning of Section 25-B (2) (a) (ii) of the I. D. Act. The specific evidence of the workman W. W. 1 is that the management did not comply the provisions under Section 25-F of the I. D. Act while terminating her service. The provision under Section 25-F of the I. D. Act lays down certain pre-conditions for the management is the event of retrenchment of a workman who is in continuous service within the meaning of Section 25-B of the I. D. Act. In the decision *Shyam Sundar Rout Vs. Orissa State Road Transport Corporation and Others* reported in 69 (1990) C. L. T. 357, it has been held by the Hon'ble Division Bench of the Orissa High Court that the compliance of the provisions under Section 25-F of the I. D. Act is mandatory even if employment is contractual or for specific term. In the instant case there had been no compliance of the provisions under Section 25-F of the I. D. Act by the management by giving one month's prior notice or one month's wages in lieu of notice or retrenchment benefits as required under the I. D. Act simultaneously with the retrenchment order and

therefore the retrenchment order of the workman from in her service is invalid in the eye of law. Similar view has been taken by the Hon'ble Apex Court in the case General Manager, Maryana Roadways *Vr. Rudhan Singh* reported in A. I. R. 2005 SUPREME COURT 3966. In the said Judgment the Hon'ble Apex Court have held that the benefit of 240 days of continuous service is necessary and not one year of complete service. Thus the non-compliance of the provision of Section 25-F of the I. D. Act renders the termination of service of the workman with effect from the 4th March 2000 illegal and therefore unjustified. Since the termination of service is illegal, the workman is entitled to the benefit of reinstatement in service.

6. In the case General Manager Haryana Roadways *Vr. Rudhan Singh* (*Supra*) the Hon'ble Supreme Court have held as follows as regards the factors relevant for awarding full/partial back wages:

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of S. 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i. e. whether after proper advertisement of the vacancy or inviting applications from the Employment Exchange, nature of appointment, namely, whether *ad hoc* short term, daily wage temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of backwages. One of the important factors, which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him, he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i. e. from the date of termination till the date of the award, which experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

In the instant case the workman had worked under the management for a rather small period under the periodical appointments either for 44 days or for 89 days at a stretch and continued till the date of her retrenchment with breaks for one or two days and at times breaks for more days. Under such circumstances, it is clear that the appointment of the workman was not of permanent character but it was for short and intermittent period though in the many of the years the workman had worked for more than 240 days. In such a situation it would be wholly inappropriate to award any back wages to the workman.

7. Hence the reference is answered as follows—

1. The termination of services of Mrs. Ritarani Mohapatra by the management of Talcher-Angul Development Authority, Angul with effect from 4th March 2000 is illegal and therefore unjustified.

2. The workman, namely, Mrs. Ritarani Mohapatra is entitled to the relief of reinstatement in service only and not to the relief of any back wages.

The reference is answered accordingly *ex parte*.

Dictated and corrected by me.

S. K. MOHAPATRA

28-6-2007

Presiding Officer

Labour Court

Bhubaneswar

S. K. MOHAPATRA

28-6-2007

Presiding Officer

Labour Court

Bhubaneswar

By order of the Governor

N. C. RAY

Under-Secretary to Government